

**SECRET****\*OGC Has Reviewed\***

Services Officer

12 July 1949

Office of the General Counsel

Report of Audit - Contract PSC-50-Unv.

1. This office is in receipt of a copy of Report of Audit, dated 28 June 1949, concerning Contract [REDACTED] and covering the period from 2 June 1949 through 31 January 1949. According to the Report, the contractor maintains it has incurred additional costs subsequent to the latter date, which shall be commented upon briefly in the ensuing paragraphs. It is our understanding that a copy of this Report is on file with your office.

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2. Paragraph 6 (2) of the Report requests this office to determine whether the acceptance of the contractor's proposals for purchase of property acquired under the contract would permit the contractor to recover otherwise allowable costs, which cannot now be allowed because of the cost ceiling. Though, in the final analysis, the acceptance of the contractor's proposal would result in a reduction of the net contract cost to the Government, this device would be somewhat at variance with the "total actual cost" theory of this type of contract. Ordinarily the disposition of personal property is effected upon the termination of the contract, as required by the usual property disposal article, by obtaining competitive bids from a minimum of 3 reliable sources. The function of this article is to dispose of such property, where permissible, and to return to the Government such sum of money as may be fair and proper, and not to enable the contractor to recover for costs otherwise unrecoverable. These aspects of the contractor's proposal are completely covered in paragraph 5 of subject Report.

3. It is therefore the opinion of this office that the acceptance of the contractor's proposal, for purchase of property acquired under the contract, may not be used to permit the contractor to recover otherwise allowable costs which cannot now be allowed because of the cost ceiling, since it would appear to involve a consideration outside the contract.

4. A few comments in connection with other matters affecting the solution of this problem appear appropriate. It is noted that the contractor maintains it has incurred additional costs after 31 January 1949 which, because of the time limitation imposed by the contract, cannot be claimed. It is also noted that there are January 1949 costs not yet billed in the amount of \$1,615.59, as contrasted with the disallowances totaling \$1,890.20 disclosed in the audit. When the contractor is informed of the extent of the disallowances, this office perceives no obstacle to the submission of a supplemental bill for January 1949 costs in the amount specified. With respect to those costs which the contractor has

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be no legal objection, subject to a determination by the Contracting Officer that the Government had received the benefits of the contractor's action, to extending the period of the contract to the extent necessary to allow the contractor to bill for the additional costs as would bring the total cumulative billing up to the contract limitation of \$125,000.00 or such sum as the Contracting Officer may consider proper in the light of the Report of Audit.

5. This memorandum is forwarded to you inasmuch as Recommendations 6 (1) and (2) of Report of Audit are matters concerning your function.

L. R. HOUSTON  
General Counsel

JK/hw

cc: Subject ✓  
Chrono  
~~Central Rec.~~

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